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Dee May
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EX PARTE OR LATE FILED



November 29, 1999

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

Re: CC Docket No. 99-295: In the Matter of Application of Bell Atlantic Pursuant to
Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA
Services in New York

Dear Ms. Salas:

At the request of Mr. Eric Einhorn and Ms. Andrea Kearney of the Common Carrier Bureau's Policy Division, Bell Atlantic is filing the attached response to questions regarding certain OSS-related issues raised in the above-captioned proceedings.

As outlined in the Public Notice (DA-99-2014) issued by the FCC on September 28, 1999, the 20-page ex parte limit does not apply because Bell Atlantic is responding to questions raised by commission staff.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

Attachment

cc: E. Einhorn
A. Kearney

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ATTACHMENT

1. Flow Through.

As demonstrated in its Application and Reply Comments, Bell Atlantic's systems and processes are fully capable of handling both current and future demand. Accordingly, for the reasons outlined in those filings, Bell Atlantic satisfies any flow-through standard the Commission might reasonably apply.

Commission precedent holds that, "in the case of OSS functions that are analogous to OSS functions that a BOC provides to itself," a BOC must provide competing carriers with "access . . . that is equivalent to the access the BOC provides itself." Louisiana II Order ¶ 87; see also Michigan Order ¶ 139.¹ "For those OSS functions that have no retail analogue . . . , a BOC must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete." Louisiana II Order ¶ 87; see also id. ¶ 134. The Commission will then "consider whether specific performance standards exist for those functions," id., particularly "performance standards established by state commissions," id.; see also Michigan Order ¶ 141.

"A competing carrier's orders 'flow through' if they are transmitted electronically through the gateway and accepted into [the BOC's] back office ordering systems without manual intervention." Louisiana II Order ¶ 107. At best, flow through can be a performance measure of subsidiary significance. What ultimately matters to a CLEC's ability to compete are results: whether its orders are provisioned in a timely and adequate manner. Whether a successfully provisioned order somewhere along the line was touched by human hands should be of little consequence. See PSC Reply at 11.

Nevertheless, the Commission has attached significance to flow through, on the theory that it may serve as "a yardstick to evaluate whether an incumbent LEC's OSS is capable of handling reasonably foreseeable commercial volumes of orders." Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, 13 FCC Rcd 12817, ¶ 73 (1998) ("Performance Measurements NPRM"); see also id. ("If a LEC processes a substantial number of orders manually, rather than electronically, a competing carrier may be effectively prevented from increasing its order volume due to the increased likelihood of errors and delays in order completion."); see also Louisiana II Order ¶ 107; Michigan Order ¶ 180.²

¹ The Commission has recognized that "parity" does not mean "perfection." See Letter from William E. Kennard, Chairman, FCC, to Sen. John McCain and Sen. Sam Brownback, at 2 (Mar. 20, 1998); Michigan Order ¶ 203; id. ¶ 278; Louisiana II Order ¶ 57. The Commission has further recognized that there may be cases in which, "although equivalent access has not been achieved for an analogous function, the access that [the BOC] offers is still nondiscriminatory within the meaning of the statute, because it offers an efficient competitor a meaningful opportunity to compete." South Carolina Order ¶ 98 n.292 (citing Michigan Order ¶ 141 n.345).

² Even so, the Commission has condemned only "excessive reliance on manual processing, especially for routine transactions," and has recognized that there are "instances in

In this case, flow-through concerns are entirely misplaced. Bell Atlantic's Application is fundamentally different from any of the ones that preceded it. Bell Atlantic's OSS have successfully handled commercial volumes and have consistently kept pace with rapidly increasing demand. See Bell Atlantic Rep. Cmts. at 16. Bell Atlantic has not been content to rely on manual processing, instead implementing a range of flow-through capabilities to which it agreed in a Pre-Filing Statement negotiated with the PSC, with input from CLECs and the Department of Justice. See id. at 17. Independent auditor KPMG confirmed that Bell Atlantic has properly implemented each of these capabilities. See id. at 18. The matter should end there.

To attach significance to flow through as an indirect indicator of a BOC's ability to handle expanding future demand is misplaced where mass-market demand has already developed and its explosive growth has consistently been accommodated. For example, for platform lines alone, Bell Atlantic's monthly volumes have increased from fewer than 3,000 lines in January to more than 50,000 lines in September. See id. at 6; BA-NY's Joint Supplemental Affidavit of D. Albert, et al., Exh. Pt. J (Apr. 13, 1999) (App. C, Tab 638). Yet, despite this increase, Bell Atlantic has continued to provision 99 percent of orders on time. See Application at 16; Bell Atlantic Rep. Cmts. at 6, 16.

In any event, in Bell Atlantic's case, flow through can be measured only by absolute standards -- not through a wholesale/retail comparison. The PSC has determined that, in Bell Atlantic's case, there is no close retail analog for flow through. In its Carrier-to-Carrier rulemaking, the PSC set itself the goal of establishing "parity standards for functions that have retail analogies and absolute standards for functions that do not have retail analogies." Case 97-C-0139, PSC, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Order Adopting Inter-Carrier Service Quality Guidelines at 2, Feb. 16, 1999.³ The PSC adopted absolute standards for "percent flow through achieved," id., Order Establishing Permanent Rule, App. at 24, June 30, 1999, thereby indicating that it found that no retail analog exists.

Moreover, to the extent that any meaningful wholesale/retail comparison can be made, Bell Atlantic has provided it. In Bell Atlantic's systems, certain simple retail orders can be input through a simplified interface called the Direct Order Entry ("DOE") system; information "flows through" from the DOE system directly into the Service Order Processor ("SOP"), which is the underlying OSS. See Miller/Jordan Decl. ¶ 57; Miller/Jordan/Zanfini Rep. Decl. ¶ 37. More

which manual processing is appropriate." Louisiana II Order ¶ 110 (emphasis added); see also South Carolina Order ¶ 107; Michigan Order ¶ 178.

³ See also Cases 97-C-0271 and 99-C-0949, PSC, Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions, etc., Notice of Proposed Rulemaking at 3, Aug. 30, 1999 ("Parity measures are evaluated by comparing BA-NY retail and BA-NY wholesale performance and applying statistical tests, while absolute standard measures are judged by pre-defined standards. . . . [A]bsolute standard measurements relate to performance levels for CLEC measurements for which there are no analogous BA-NY retail measurements.").

complex retail orders, however, cannot be entered via the DOE system; instead, they must be entered directly into the SOP. Retail representatives take these more complex orders down on paper; they do not input them into the SOP until after the telephone call with the customer. Complex orders therefore present the same opportunity for error as CLEC orders that fail to “flow through”: in both cases, customer information must be recorded twice instead of just once. Accordingly, the percentage of retail orders that can be and is entered through the DOE system is somewhat analogous to the percentage of CLEC orders that can and do flow through.

Using this method, Bell Atlantic compared the percentage of CLEC order kinds that are designed to flow through with the kinds of orders that would “flow through” on the retail side. See Miller/Jordan Decl. ¶¶ 56-58; Dowell/Canny Decl. Att. F; Miller/Jordan/Zanfini Rep. Decl. ¶¶ 37-38. This analysis showed that there was “a high correlation between ‘flow through’ of retail orders and CLEC order types that are designed to flow through.” Miller/Jordan Decl. ¶ 58. Specifically, as compared to order kinds designed to “flow through” on the retail side, 89 percent of resale orders, 95.7 percent of platform orders, and 92 percent of other UNE orders were designed to flow through. See id.; Miller/Jordan/Zanfini Rep. Decl. ¶ 38.

AT&T has criticized this comparison, mistakenly arguing that it is not meaningful unless accompanied by data concerning the actual numbers of orders (rather than order types) that flow through. AT&T is wrong. For one thing, the comparison AT&T proposes will be skewed if (as is inevitably the case) CLECs have a different order mix than Bell Atlantic. See Bell Atlantic Rep. Cmts. at 25 n.28. For example, if CLECs submit a greater proportion of complex orders than Bell Atlantic’s own retail representatives, their flow-through rate will compare unfavorably even though Bell Atlantic has done all that is required.⁴ For another thing, AT&T’s comparison will be skewed if (as again is inevitably the case) CLECs submit orders with errors. Because Bell Atlantic does not reject all erroneous orders (instead letting some “fall out” for fixing by Bell Atlantic, see Miller/Jordan/Zanfini Rep. Decl. ¶ 36), CLECs’ flow-through score will again compare unfavorably even though Bell Atlantic has done all that is required.

Nevertheless, in response to AT&T’s claim, Bell Atlantic’s reply comments provided data demonstrating that, even using AT&T’s flawed comparison, the actual number of orders that flow through also is comparable. See Miller/Jordan/Zanfini Rep. Decl. ¶ 39; id. Att. E. The data showed that, for the month of October, only 61 percent of Bell Atlantic’s retail orders were entered through the DOE system and can be considered to “flow through.” See Miller/Jordan/Zanfini Rep. Decl. ¶ 39; id. Att. E. By comparison, more than 60 percent of all unbundled element orders flow through, and the flow-through rate for platform orders is even higher: more than 70 percent in September. See Miller/Jordan/Zanfini Rep. Decl. ¶ 35.

⁴ Cf. Case 97-C-0139, PSC, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Order Establishing Permanent Rule, App. at 22-23, June 30, 1999 (recognizing that, because “the proportion of orders generated by CLECs that have flow through capability . . . depend[s] on the CLECs,” the “% Flow Through metric is . . . of limited value in terms [of] monitoring Bell Atlantic-New York’s performance”).

In sum, in Bell Atlantic's systems, there is no real retail analog to the percentage of CLEC orders that flow through. Thus, the "meaningful opportunity to compete" test -- not the "parity" test -- applies. And Bell Atlantic has submitted extensive data demonstrating that it has in place systems and processes -- with extensive flow-through capabilities -- that have been shown through actual, real-world experience to be capable of keeping pace with increasing demand. That should be enough. Even if the parity test could somehow apply, however, Bell Atlantic's showing would still be more than adequate. The comparative data submitted by Bell Atlantic based on the closest retail analog demonstrate that the flow-through capabilities for CLEC orders are comparable to those for retail orders.

2. Timeliness of Order Confirmation and Reject Notices.

As demonstrated in its Application and Reply Comments, Bell Atlantic's OSS return confirmations and reject notices in a timely manner.

As explained above, the Commission has stated that it will engage in a wholesale/retail comparison only where a meaningful retail analog actually exists. As the PSC stated in its Evaluation, "there is no retail analogue in Bell Atlantic-NY's retail system" for confirmation and reject notices. PSC Eval. at 42.⁵ Accordingly, in the Carrier-to-Carrier rulemaking (in which the PSC established "parity standards for functions that have retail analogies and absolute standards for functions that do not have retail analogies," supra), the PSC used absolute standards to measure the timeliness of confirmation and reject notices.⁶ Before it filed comments in this FCC proceeding, AT&T agreed to this approach: "the parties, including AT&T, agreed in the inter-carrier service quality proceeding to absolute standards for these measures in recognition of the differences between wholesale and retail ordering processes. Indeed, in its interconnection agreement, AT&T agreed to utilize absolute standards for timeliness of order confirmation, reject notices, and completion notices." PSC Reply at 21.

In the context of the present application, therefore, the relevant standard is whether competitors have a "meaningful opportunity to compete," not parity with retail. Indeed, the FCC itself has stated in prior 271 orders that comparative retail information should be provided only "[i]f a BOC performs an analogous activity for its retail operations." Louisiana I Order ¶ 33 n.117 (emphasis added); see also South Carolina Order ¶ 118 ("if the BOC performs an analogous activity for its retail operations, it needs to provide comparative information in its application to demonstrate its compliance with the nondiscriminatory standard in the Act")

⁵ See also Performance Measurements NPRM ¶ 59 (recognizing that, in some cases, a LEC may "not currently provide itself with a certain form of notice (e.g., a FOC)").

⁶ See Case 97-C-0139, PSC, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Order Approving Interim Guidelines for Carrier-to-Carrier Performance Standards and Reports, Mar. 16, 1998; Case 97-C-0139, PSC, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Order Establishing Permanent Rule, June 30, 1999.

(emphasis added).⁷ And the New York PSC has made clear that there is no such analogous retail activity here. Consequently, this application is unlike previous ones where evidence in the record showed that there was a retail analog. See Michigan Order ¶ 187 n.479 (“[e]vidence in the record suggest[ed] that the appropriate retail analogue for a [confirmation notice] would be the time that elapses between when [a retail] order is placed into the legacy systems and when the order is recognized as a valid order by the legacy systems”); see also Louisiana II Order ¶¶ 118, 123; Louisiana I Order ¶ 36; South Carolina Order ¶¶ 118, 122. As already explained, the same is simply not true with respect to Bell Atlantic’s systems, as the PSC expressly found. Accordingly, the wholesale/retail comparison requirement is by its own terms inapplicable.

In sum, there is no retail analog to confirmation and reject notices in Bell Atlantic’s retail systems. Thus, the “meaningful opportunity to compete” test -- not the “parity” test -- applies. Bell Atlantic has submitted extensive quantitative proof concerning the timeliness of its confirmation and reject notices. See Application at 40-41; Miller/Jordan Decl. ¶¶ 45-49; Dowell/Canny Decl. ¶ 169; Miller/Jordan/Zanfini Rep. Decl. ¶ 43; Dowell/Canny Rep. Decl. ¶ 28 & Att. F; see also PSC Eval. at 43. This is more than sufficient to show that Bell Atlantic satisfies the “meaningful opportunity to compete” test.

3. Rejection Rates.

Finally, Bell Atlantic has shown that high rejection rates are attributable to CLECs’ errors -- not to any failure to provide nondiscriminatory access to its OSS.

In previous 271 orders, the Commission has made clear that BOCs cannot be held responsible for flow-through problems that are attributable to CLECs’ errors. See, e.g., Louisiana II Order ¶ 111 (“We do not hold a BOC accountable for flow-through problems that are attributable to competing carriers’ errors.”); Louisiana I Order ¶ 29 (“we are not suggesting that BellSouth is responsible if the quality of work performed by the competing carrier’s workforce is, indeed, inferior”); Michigan Order ¶ 178 (“we recognize that Ameritech is not responsible for errors made by competing carriers”); see also DoJ Eval. at 30 (“errors committed by CLECs, for which Bell Atlantic should not be held responsible”). The Commission has never announced a special evidentiary standard applicable to this issue. The normal evidentiary framework therefore applies: the applicant must set out “a prima facie case,” opponents then “must produce evidence” in rebuttal, and the Commission resolves factual disputes using the “preponderance of the evidence” standard. Louisiana II Order ¶ 52.

In connection with the most recent 271 applications, the Commission rejected claims that high fall-out rates were attributable to CLECs’ errors.⁸ Its conclusion, however, was based on the unique record in those proceedings. For example, in connection with BellSouth’s

⁷ The Commission made clear, however, that, even in those cases, a wholesale/retail comparison is merely “one way for a BOC to demonstrate that it meets the nondiscriminatory standard.” Louisiana II Order ¶ 123 (emphasis added).

⁸ The issue here is reject rates, not fall-out rates. That said, the question of what must be shown to assign responsibility for errors appears similar.

applications, the Commission determined that the applicant had “fail[ed] to provide supporting data or documentation to substantiate its conclusions,” that the applicant’s “own data indicate[d] that in a significant number of cases, the failure of orders to flow through . . . cannot be attributed solely to the errors of competing carriers,” and that even the applicant “itself attribute[d] the significantly lower flow-through rates for competing carriers to causes other than the competitors’ errors.” Id. ¶¶ 111, 112; see also Louisiana I Order ¶¶ 29, 37 n.132; South Carolina Order ¶¶ 108-114. Perhaps most important, the record there showed that “all carriers” were experiencing high error rates. Louisiana II Order ¶ 111 (emphasis added); see also South Carolina Order ¶ 109 (“every competing carrier . . . is experiencing high order error rates”) (emphasis added). Where no carriers had been able to achieve low error rates, the Commission concluded that it could not, without more, attribute the cause entirely to the actions of individual CLECs.

The circumstances here could not be more different. Bell Atlantic has submitted extensive supporting documentation showing that errors are attributable to CLECs. Overall, “[f]rom October 1998 through July 1999, an average of 31% of resale and UNE orders were rejected or queried to CLECs.” See Miller/Jordan Decl. ¶ 42; see also Dowell/Canny Decl. Att. D (providing monthly detail). Bell Atlantic explained, however, that “[t]he rate for individual CLECs varies greatly, with some having as few as 3 - 5% of their orders rejected and others having as many as 70% or more rejected.” Miller/Jordan Decl. ¶ 42; see also Miller/Jordan/Zanfini Rep. Decl. ¶¶ 33-34. Bell Atlantic submitted CLEC-specific rejection rates for both resale and UNEs for the months of June through August, showing wide variations among individual CLECs. See id. Att. C (confidential submission).

The fact that some CLECs are able to achieve much lower reject rates than others by itself unmistakably shows that CLECs that allocate sufficient resources and attention to achieving order accuracy are readily able to achieve that goal. See Miller/Jordan/Zanfini Rep. Decl. ¶ 33. Moreover, Bell Atlantic has submitted extensive evidence of its efforts to educate CLECs on its business rules. See Miller/Jordan Decl. ¶¶ 87-93. Indeed, KPMG reviewed Bell Atlantic’s documentation and gave it a clean bill of health. See POP9 IV 222-227 (App. C, Tab 916). It is therefore no surprise that the PSC, which in its Carrier-to-Carrier proceeding has insisted on hundreds of different metrics gauging every conceivable aspect of Bell Atlantic’s performance, has declined to adopt a standard concerning reject rates -- thereby implicitly indicating that Bell Atlantic’s performance is not at issue in this area and that, if orders are rejected, this is attributable to CLEC performance for which Bell Atlantic should not be held responsible.

In sum, Bell Atlantic readily satisfies the applicable “preponderance of the evidence” standard of proof. Bell Atlantic has submitted extensive and detailed quantitative data showing that individual CLECs have wildly disparate rejection rates, which indicates that CLECs that choose to can readily avoid rejects. Moreover, Bell Atlantic has submitted extensive evidence that it provides CLECs with proper education and assistance as to its business rules. Clearly, then, CLECs -- not Bell Atlantic -- are responsible for high reject rates.